

**Statement of Support Under 37 CFR 1.173 (c)**

The following describes the support in the specification for the claims as amended, supplementing the statements filed on December 4, 2003 and March 29, 2010, which are incorporated herein by reference.

Amended claims 24, 49, and 51 are supported at least by the original claims; figures 7-10; column 1, lines 28-52; column 3, line 10 through column 4, line 5; column 6, lines 1-47; column 11, line 51 through column 12, line 64; column 15, line 61 through column 17, lines 21 through 31 and 65; and column 23, lines 21-37.

Claims 42 and 49 are amended to correct antecedent basis concerns.

### **REMARKS**

Claims 1-33 and 40-52 were pending in the application. The Examiner allowed claims 1-33 and 40, 41, 43, 44, 47, 48, and 50. The Examiner rejected claim 24 under 35 U.S.C. 101. The Examiner rejected claims 42 and 49 under 35 U.S.C. 112, second paragraph. The Examiner rejected claims 45, 46, and 51 under 35 U.S.C. 102(e) as allegedly anticipated by US Patent No. 5,590,325 to Kolton et al. ("Kolton"). The Examiner rejected claim 52 under 35 U.S.C. 103 as allegedly unpatentable over Kolton and US Patent No. 5,895,468 to Whitmyer, et al. ("Whitmyer"). The Examiner also rejected several claims as based upon a defective broadening reissue oath.

Claims 24, 42, 45, 49, and 51 are amended. No new matter is introduced by these amendments. Claims 1, 25, 40, 42, 43, 45, and 49-52 are the independent claims.

We respectfully traverse the rejections and request withdrawal of the same.

#### **Rejections Based Upon The Reissue Declaration**

The Examiner rejected several claims as based upon an allegedly defective reissue declaration. In particular, the Examiner alleges that the reissue declaration no longer supports the application because of subsequent amendments to the application. We traverse this rejection at least because the reissue declaration recites at least one error that is corrected with the current application.

More specifically, the declaration states that the "patent contains at least one error, by which applicant claimed less than he had a right to claim. . . . In addition, applicant believes that he is entitled to a claims [*sic*] which encompass a computer readable medium, e.g., per claims 24 and 32." It is undisputed that the original patent failed to claim a computer readable medium.

The MPEP at section 1412.03, Section I describes a broadening claim as follows (revision markings omitted):

A claim which covers something that the original claims do not is a broadened claim. A claim would be considered a broadening claim if the patent owner would be able to sue any party for infringement who previously could not have been sued for infringement. Thus, where the original patent claims only the process, and the reissue application newly adds product claims, the scope of the claims has been broadened because a party could not necessarily be sued for infringement of

the product based on the claims of the original patent (if it were made by a different process).

This description applies equally here. The original patent did not have claims pertaining to a computer readable medium, and the broadening reissue application adds such claims. The declaration as filed sets this out as one of the errors to be corrected by the application. Accordingly, at least one error is recited by the declaration, and that error is still corrected by the pending claims.

We therefore respectfully submit that the declaration on file is proper such that the claims should not be rejected as depending from a defective declaration. We note that we intend to submit a broadening reissue supplemental oath when prosecution is otherwise complete.

#### Rejection under 35 U.S.C. 101

The Examiner rejected claim 24 under 35 U.S.C. 101 for being directed to non-statutory subject matter. Although we disagree with this rejection, to expedite prosecution, claim 24 is amended to recite in part a “non-transitory computer readable medium.” We understand the term “non-transitory” to remove only propagating transitory signals per se from the claim scope and does not relinquish rights to all standard computer-readable media that are not only propagating transitory signals per se. Accordingly, we respectfully request withdrawal of this rejection.

#### Rejections under 35 U.S.C. 112, second paragraph

The Examiner rejected claims 42 and 49 under 35 U.S.C. 112, second paragraph. Claims 42 and 49 are amended to correct the antecedent basis of the claims to obviate these rejections.

#### Rejections under 35 U.S.C. 102(e)

The Examiner rejected claims 45, 46, and 51 under 35 U.S.C. 102(e) as anticipated by Kolton. We incorporate by reference the remarks filed on March 29, 2010 regarding Kolton and the claims for brevity. Claims 45 and 51 are amended to recite “receiving at a server a signal relating to a user manipulation of a grade value represented by at least one graded representation portion.” As requested by the Examiner in the interview summarized above, we note that claim 45 is similar to at least allowed claim 40, which recites in part “receiving a signal representing a user manipulation of the grade of the graded representation portion.”

Because Kolton fails to teach or suggest every element of the claims, Kolton cannot support the rejection of these claims. Accordingly, we respectfully request withdrawal of these rejections.

Claims 46 and 52 are ultimately dependent upon one of the independent claims discussed above. While we believe that other arguments are available to highlight the subject matter presented in various of these dependent claims, we also believe that the comments set forth herein regarding the independent claims are sufficiently compelling to warrant present exclusion of such additional points for the sake of brevity.

We thank the Examiner for his helpfulness in the telephone interview. The Examiner is invited to call the undersigned if the Examiner believes that a telephone interview may expedite prosecution of this matter.

The Commissioner is hereby authorized to charge any additional fees which may be required in this application to Deposit Account No. 06-1135.

Respectfully submitted,

FITCH, EVEN, TABIN & FLANNERY

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